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10 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
11 IN AND FOR THE COUNTY OF COWLITZ

12 WASHINGTON ASSOCIATION FOR
13 SUBSTANCE ABUSE AND VIOLENCE
14 PREVENTION, a Washington non-profit
15 corporation; DAVID GRUMBOIS, an
16 individual; GRUSS, INC., a Washington
17 corporation,

18 Plaintiffs,

19 v.

20 The STATE OF WASHINGTON,

21 Defendant.

No.

COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF FOR
CONSTITUTIONAL VIOLATIONS

22 I. INTRODUCTION

23 1. Initiative No. 1183 ("I-1183") privatizes the sale and distribution of hard
24 liquor by (1) closing state liquor stores and selling the State's related assets and (2)
25 licensing private parties to control the sale and distribution of hard liquor. I-1183
separately alters Washington's existing wholesale distribution and pricing model for wine
to allow discriminatory pricing, central warehousing, and retail to retail sales, among other

1 changes. The Initiative also imposes taxes to raise general revenue as it directs ten million
2 dollars to enhance local public safety programs without any requirement that those
3 programs redress the harms caused by the increased liquor sales anticipated by I-1183.
4 Finally, the Initiative permits for the first time the advertisement of hard liquor but
5 prohibits the Washington Liquor Control Board ("LCB") from restricting advertising of
6 the lawful prices for beer, wine, and hard liquor.

7 2. Initiatives under Washington Constitution Article II, § 1(a) must conform to
8 the same constitutional restraints applicable to bills introduced in the Legislature. I-1183
9 violates Article II, § 19 of the Constitution because the measure embraces multiple
10 subjects and contains subjects within its body that are not embraced by its title. Plaintiffs
11 challenge the constitutionality of I-1183 in its entirety and seek declaratory and injunctive
12 relief against the State of Washington to prevent its continued enforcement.

13 II. PARTIES

14 3. Plaintiff Washington Association for Substance Abuse and Violence
15 Prevention ("WASAVP") is a non-partisan, non-profit organization, founded in 2000. Its
16 mission is to unite prevention advocates in Washington State in order to create
17 environments that support safe and healthy communities through prevention of substance
18 abuse and violence. WASAVP works to build cooperative partnerships in support of
19 prevention strategies with state agencies, nonprofit organizations, associations, schools,
20 and communities. It also advocates before the Washington State Legislature on
21 prevention issues and provides workshops on advocacy and program sustainability. As a
22 result, WASAVP serves as the lead voice for state and national advocacy and an essential
23 stakeholder in matters of substance abuse and violence prevention in Washington State.

24 4. Plaintiff David Grumbois is an owner of real property in Longview, Cowlitz
25 County, Washington. The State of Washington contracts with Grumbois to lease space on

1 Grumbois' real property for use as a state liquor store. The State's lease with Grumbois
2 runs through September 30, 2017. I-1183 will force the State to terminate the lease.

3 5. Plaintiff Gruss, Inc., ("Gruss") is a Washington corporation that owns and
4 operates two grocery stores in Kitsap County, Washington: Ralph's Red Apple Market in
5 Bremerton, Washington, and Poulsbo Red Apple Market in Poulsbo, Washington
6 (collectively "Red Apple Markets"). The Red Apple Markets sell wine and beer at retail
7 to consumers. The Red Apple Markets are small, local grocery stores. I-1183 will
8 damage the Red Apple Markets' business as it places them at a competitive disadvantage.

9 6. Defendant the State of Washington is charged with enforcing initiatives that
10 have been enacted into law. Defendant Washington is a proper party to this action under
11 RCW 7.24.110.

12 **III. JURISDICTION AND VENUE**

13 7. This Court has jurisdiction over this matter pursuant to chapter 2.08 RCW,
14 and chapter 7.24 RCW.

15 8. Venue is proper in this Court pursuant to RCW 4.92.010 because the
16 residence or principal place of business of one or more of the Plaintiffs is in Cowlitz
17 County, Washington.

18 **IV. STANDING**

19 9. Plaintiffs have standing to challenge I-1183 because they fall within the zone
20 of interests that I-1183 regulates, and they have or will suffer an injury in fact, economic
21 or otherwise, from the enforcement of I-1183.

22 10. An actual dispute exists between Plaintiffs and Defendant. The parties
23 have genuine and opposing interests, which interests are direct and substantial, and of
24 which a judicial determination would be final and conclusive.
25

11. Plaintiffs are entitled to a declaratory judgment that I-1183 is unconstitutional, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

12. Plaintiffs have clear legal rights to prevent and enjoin continued enforcement of I-1183 as described herein, which rights are and continue to be invaded by Defendant, resulting in actual and continuing injury. No adequate remedy at law exists to remedy this invasion of Plaintiffs' rights.

13. This Court's grant of declaratory and injunctive relief will directly redress the harms caused to the Plaintiffs by continued enforcement of I-1183.

V. FACTS

A. Washington's History of Regulatory Control over Beverage Alcohol

14. In 1933, the Twenty-First Amendment to the United States Constitution repealed Prohibition and granted states the power to regulate the distribution and sale of alcohol.

15. All states, including Washington, adopted some form of a three-tier system for alcohol sales, where wine, beer and hard liquor flowed from the manufacturer tier, through the distributor tier, to the retailer tier.

16. The distributor tier was inserted into the system after Prohibition to act as a buffer between the manufacturers and retailers to eliminate or reduce undue influence, and provide a mechanism to efficiently collect taxes.

17. Some states adopted a “control” system, with the state exclusively controlling the distribution and/or retail sale of alcohol within their borders. Other states chose a “license” system that allowed private parties to obtain a state license to distribute and/or sell alcohol within their borders.

1 18. In 1934, Washington adopted the Washington State Liquor Act (the "Liquor
2 Act"), also known as the Steele Act, to regulate the importation, manufacture, distribution
3 and sale of alcohol. With this Act, Washington adopted a "control" system, whereby the
4 state controlled the distribution and sale of some alcoholic beverages to encourage higher
5 levels of public safety, controlled distribution, and efficient tax collection.

6 19. The Liquor Act established the LCB.

7 20. The LCB is a State administrative agency empowered to regulate the sale
8 and distribution of liquor, which includes: spirits ("hard liquor"), wine, and beer. RCW
9 66.04.010(25).

10 21. The different types of liquor – hard liquor, beer and wine – have been
11 regulated differently by the State since the passage of the Steele Act. For example, hard
12 liquor has been distributed and sold exclusively by the State since 1934. Under the LCB's
13 earliest regulations, hard liquor was not permitted to be consumed in public, but taverns
14 could sell beer (and later wine) by the glass. The LCB licensed grocery stores to sell
15 packaged wine and beer. Hard liquor could only be sold through State-operated liquor
16 stores, and not in grocery stores.

17 22. While the State has tightly controlled the distribution and retail sale of hard
18 liquor through the years, the State has taken a significantly different approach when it
19 comes to the distribution and retail sale of wine and beer.

20 **B. The State's Regulatory Structure for Wine Before I- 1183.**

21 23. The State generally follows a three-tier system for the distribution and sale
22 of wine. RCW 66.28.280.

23 24. The manufacturer tier consists of the producers of wine.

24 25. The distributor tier consists of business entities that purchase wine from the
25 manufacturers and resell to retailers through distribution channels.

1 26. The retailer tier sells wine to consumers. Retail establishments consist of
2 on-premises retailers (e.g., restaurants, bars, hotels) and off-premises retailers (e.g., wine
3 shops, grocery stores, and "big box" retailers such as Costco).

4 27. A fundamental aspect of the State's three-tier system applicable to wine is
5 the creation and enforcement of a uniform pricing structure, which means that the
6 producer of a particular wine must sell that product to all distributors at the same price,
7 and a distributor must sell a particular product to all retailers at the same price.

8 28. The distributors' sales to retailers must be on a delivered price basis, so
9 that a retailer in a small farming community or any other remote corner of the State will
10 pay the same price for a particular wine as every other retailer served by the same
11 distributor.

12 29. Volume discounts are illegal on manufacturers' sales to distributors or
13 distributors' sales to retailers.

14 30. Retailers are prohibited from selling wine to other retailers.

15 31. All of these provisions work together to ensure that the price for wine is at
16 least roughly the same everywhere in the State. This eliminates any possibility of price
17 discrimination, which would put small businesses at an economic disadvantage against
18 larger businesses and encourage over-promotion of sales. It also eliminates significant
19 geographic disparities, so everyone in the state has reasonable access to wine at
20 reasonable prices.

21 32. The LCB supervises the distribution and retail sale of wine through a
22 regulatory licensing system.

23 33. Participants in each tier must obtain a license to manufacture, distribute, or
24 sell wine, with a variety of regulations applying to each type of license. *See, e.g., RCW*
25

1 66.24.170 (domestic winery license); RCW 66.24.200 (wine distributor license); RCW
2 66.24.360 (grocery store retail license for wine).

3 34. Private retailers may obtain a license to sell wine in its original package.

4 35. The Legislature has recognized that the three-tier system is a valuable
5 system for the distribution of wine. RCW 66.28.280.

6 **C. The State's Regulatory Structure for Hard Liquor Before I-1183.**

7 36. Unlike the system applicable to wine, the State separately and directly
8 controls the distribution and sale of hard liquor. The State has done so since enacting the
9 Liquor Act in 1934. This is still considered a three-tier system, but with the State
10 operating as the distributor and retailer.

11 37. Washington is one of 18 states that retain exclusive control over the
12 distribution and/or sale of hard liquor.

13 38. For distribution control, the LCB operates a central facility in Seattle to
14 distribute hard liquor.

15 39. For retail operations, the LCB has established "state liquor stores" in
16 accord with the Liquor Act.

17 40. The LCB has established approximately 165 state-operated liquor stores
18 and 160 contract liquor stores in Washington.

19 41. State liquor stores are responsible for supplying hard liquor to the various
20 types of licensees who sell hard liquor by the glass, such as restaurants, taverns, and bars.

21 42. Unlike wine, and with a limited exception for craft hard liquor, hard liquor
22 in original containers must be purchased exclusively from a state liquor store. *See, e.g.,*
23 RCW 66.16.010. Private parties cannot obtain a license to sell hard liquor in its original
24 package.
25

1 **D. The State's Regulatory Structure for Beer Before I-1183.**

2 43. The State generally follows a three-tier system for the distribution and sale
3 of beer. RCW 66.28.280.

4 44. The retailer tier sells beer to consumers.

5 45. The LCB supervises the distribution and retail sale of beer through a
6 regulatory licensing system.

7 46. Participants in each tier must obtain a license to manufacture, distribute, or
8 sell beer, with a variety of regulations applying to each type of license. *See, e.g.*, RCW
9 66.24.240 (domestic brewery's license); RCW 66.24.250 (beer distributor's license);
10 RCW 66.24.360 (grocery store retail license for beer).

11 47. The Legislature has recognized that the three-tier system is a valuable
12 system for the distribution of beer. RCW 66.28.280.

13 **E. I-1183**

14 48. On May 20, 2011, I-1183 was filed by its sponsors for consideration in the
15 November 2011 election.

16 49. I-1183's ballot title provides:

17 Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard
18 liquor)

19 This measure would close state liquor stores and sell their assets; license
20 private parties to sell and distribute spirits; set license fees based on sales;
21 regulate licensees; and change regulation of wine distribution.

22 Should this measure be enacted into law? Yes [] No [].

23 50. I-1183 passed in the November 2011 general election

24 51. I-1183 privatizes Washington's system of hard liquor distribution and
25 sales. I-1183 § 101(1)(a). The measure requires the closure and sale of the State's liquor
distribution center and allows private entities to distribute hard liquor. *Id.* § 101(c). I-

1 1183 also requires the closure and sale or auction of current state liquor stores. In their
2 place, private retailers with retail premises of 10,000 square feet or larger are allowed to
3 sell and centrally warehouse hard liquor. *Id.* § 101 (g). The measure also includes an
4 exception that permits smaller stores to sell hard liquor under certain circumstances. *Id.*

5 52. I-1183 also creates franchise protection for hard liquor distributors. I-1183
6 §§ 212 – 214. Franchise protection for hard liquor (and wine) distributors is rare in other
7 states. Beer distributors in Washington and many other states are afforded franchise
8 protection.

9 53. I-1183 deregulates the marketplace and licensees by repealing and/or
10 amending numerous regulations currently governing hard liquor sales, including but not
11 limited to provisions governing uniform pricing, and limiting hours and location for the
12 sale of hard liquor. I-1183 repeals, for example, RCW 66.08.070 (sales of liquor), RCW
13 66.08.166-167 (Sunday sale restrictions on hours and location), and RCW 66.16.001
14 (uniform pricing).

15 54. I-1183 levies certain taxes as a percentage of hard liquor sales. I-1183's
16 ballot title, however, does not refer to taxes. Instead, these taxes are characterized in the
17 ballot title as "fees." In contrast to these percentage-based taxes, I-1183 charges flat fees
18 for annual licensing based on the type of license issued. *Compare* I-1183 § 103(4)
19 (charging seventeen percent tax on all hard liquor sales) *with* I-1183 § 103(5) ("In
20 addition to the payment required under subsection (4) of this section, each licensee must
21 pay an annual license fee of one hundred sixty-six dollars").

22 55. I-1183 separately operates to modify the existing three-tier wholesale
23 distribution and pricing model for wine. These changes include, among other things,
24 removing the uniform pricing system to allow discriminatory wholesale pricing in order to
25

1 facilitate volume discounts, and the ability for retailers to centrally warehouse wine. *See,*
2 *e.g.*, I-1183 §§ 101(2)(n), 101(2)(o), 119.

3 56. I-1183 also creates a fourth-tier of distribution by allowing off-premise
4 retailers (i.e., grocery stores over a certain size) to act as distributors for on-premise
5 retailers (i.e., restaurants and bars). *See, e.g.*, I-1183 § 104(8).

6 57. I-1183 also uses new tax revenues to fund local public safety programs.
7 Specifically, it provides for “An additional distribution of ten million dollars per year
8 from the spirits license fees must be provided to border areas, counties, cities, and towns
9 through the liquor revolving fund for the purpose of enhancing public safety
10 programs.” I-1183 § 302. I-1183 also changes the ability of the LCB to regulate price
11 advertising. I-1183 § 107(7).

12 58. The Initiative permits for the first time the advertisement of hard liquor.
13 I-1183 § 108. I-118, however, prohibits the LCB from restricting advertising of the lawful
14 prices of wine, beer, and hard liquor. I-1183 § 107(7).

15 59. I-1183 does not, however, alter the basic regulatory distinctions among
16 wine, beer, and hard liquor. I-1183 provides for hard liquor licenses separately from
17 licenses for wine, and does very little to alter the regulatory system for beer.

18 60. Certain of the Initiative’s provisions, including the abolition of the
19 requirement for uniform pricing of wine, become effective on December 8, 2011.

20 61. By January 1, 2012, LCB must issue spirits distributor licenses to all
21 eligible applicants. On March 1, 2012, spirits distributor licensees may start selling hard
22 liquor to retailers. On June 1, 2012, spirits retailers may start selling hard liquor to
23 consumers and on-premise retailers.

24 62. No later than June 1, 2012, the State must close all state liquor stores and
25 complete the transition to a private licensee system.

1 **F. I-1183 Was Drafted to Serve the Special Interests of Costco.**

2 63. Costco Wholesale Corporation (“Costco”) has sought on several previous
3 occasions to change Washington’s wine and hard liquor regulatory schemes because those
4 regulations conflicted with Costco’s desired business model.

5 64. In 2004, Costco sued the LCB, challenging nine different regulatory
6 provisions, including several pricing provisions, a central warehousing ban, and a ban on
7 retail-to-retail sales. The United States Court of Appeals for the Ninth Circuit upheld all
8 but one provision. *See Costco Wholesale Corp. v. Maleng*, 522 F.3d 874 (9th Cir. 2008).
9 All of the provisions upheld by the Ninth Circuit have been repealed by I-1183.

10 65. In 2006, Costco hired attorneys to lobby the Legislature against efforts to
11 rewrite wine distribution regulations.

12 66. In 2009, Costco lobbied the Legislature to adopt changes to liquor laws.

13 67. In 2010, Costco sponsored Initiative No. 1100, which had similar
14 objectives to I-1183 and included changes to the sale and distribution of beer. That
15 initiative was defeated.

16 68. In 2011, Costco drafted legislation similar to I-1183, which never received
17 a hearing by the Legislature.

18 69. In 2011, Costco sponsored I-1183.

19 70. According to the Public Disclosure Commission, Costco donated a record
20 setting \$22.52 million to the “Yes on 1183 Coalition” political action committee. The
21 second and third highest donors contributed \$50,000 each and its fourth and fifth highest
22 donors contributed \$250 and \$100, respectively.

1 VI. CAUSE OF ACTION: VIOLATION OF ARTICLE II, § 19 OF THE
2 WASHINGTON CONSITUTION

3 71. Plaintiffs repeat and re-allege each of the foregoing allegations as though
4 fully set forth herein.

5 72. Article II, § 19 of the Washington Constitution provides that “[n]o bill
6 shall embrace more than one subject, and that shall be expressed in the title.”

7 73. The object of this constitutional provision is threefold: (1) to prevent
8 hodge-podge or “logrolling” legislation; (2) to prevent surprise or fraud upon voters acting
9 through the initiative by means of provisions in bills of which the titles gave no
10 intimation, and which might therefore be overlooked and carelessly and unintentionally
11 adopted; and (3) to fairly apprise the people, through such publication of legislative
12 proceedings as is usually made, of the subjects of legislation that are being considered.
13 *DeCano v. State*, 7 Wn.2d 613, 626, 110 P.2d 627 (1941).

14 74. Article II, § 19 contains two separate requirements. The first is that every
15 bill (including initiatives) must contain only a single subject. The second is that the single
16 subject of the bill or initiative must be reflected in the bill or the ballot title.

17 75. When evaluating the constitutionality of a measure under Article II, § 19,
18 the inquiry is focused on the voters’ understanding of the initiative at the time of the vote
19 as opposed to the understanding of initiative proponents.

20 76. I-1183 violates the single-subject rule in multiple ways, including without
21 limitation:

- 22 a. I-1183 is drafted such that those voting on it are required to vote for
23 multiple subjects (*e.g.*, modification of the existing wholesale distribution
24 and pricing model for wine, imposition of a new tax on hard liquor,
25 creation of a new fourth tier of wine and hard liquor sales, and revisions to
State regulation of beer, wine and hard liquor advertising) in order to

1 obtain approval of an unrelated subject (*i.e.*, privatization of hard liquor
2 sales and distribution). This violates Article II, § 19's object to prevent
3 logrolling. I-1183, therefore, violates the single subject requirement of
4 Article II, § 19.

- 5 b. I-1183 enacts piecemeal legislation modifying unconnected aspects of the
6 three historically distinct categories of Washington's liquor laws: hard
7 liquor, wine, and beer. The multiple subjects described above lack rational
8 unity to one another. I-1183, therefore, violates the single subject
9 requirement of Article II, § 19.

10 77. I-1183 also violates the subject-in-title rule because the initiative's body
11 embraces multiple subjects not embraced by its title.

- 12 a. For example, I-1183's title references that it will "set license fees based on
13 sales." The body of the act, however, imposes both annual license fees and
14 a separate tax based on percentage of sales. Although the annual fee is
15 actually a fee, the initiative misleadingly refers to or disguises the tax as a
16 fee as well. This tax is imposed to raise revenue rather than to regulate.
17 The ballot title did not or did not sufficiently inform voters that the body of
18 the act operates to impose taxes when it uses the term fees, or that the
19 initiative intends to provide a new definition for the term "fee" to include
20 "taxes." Such misrepresentation violates Article II, § 19's purpose to avoid
21 surprise or fraud upon the voters.

- 22 b. Other of I-1183's multiple subjects, including changes to State regulation
23 of advertising for beer, wine and hard liquor, and creation of a new fourth
24 tier of wine and hard liquor sales, are similarly not reflected in the title.

25 78. I-1183 violates Article II, § 19 of the Washington Constitution.

1 79. A violation of the single subject requirement of article II, § 19 requires
2 invalidation of the legislative measure in its entirety. Even if the invalid portions of I-
3 1183 could be severed, it cannot reasonably be believed that the voters would have passed
4 the remaining valid portion(s) of I-1183 without the inclusion of the invalid portion(s).
5 Alternatively, eliminating the invalid portions renders the remainder of the initiative
6 useless to accomplish the stated purpose of the initiative.

7 **VII. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs request the following relief:

- 9 1. That the Court enter a declaratory judgment that I-1183 violates Article II,
10 § 19 of the Washington Constitution;
11 2. Such other and further relief as may follow from the entry of a declaratory
12 judgment;
13 3. Entry of an injunction prohibiting further enforcement of I-1183;
14 4. Reasonable attorney's fees, expenses and costs, to the fullest extent
15 allowed by law and equity; and
16 5. Any further relief as this Court may deem necessary and proper.

17 DATED this 7th day of December, 2011.

18 FRANK FREED SUBIT & THOMAS, LLP

19 By: 
20

21 Michael C. Subit, WSBA# 29189
22 Attorneys for Plaintiffs
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